

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	CHAPTER 7
ORLY GENDER,	§	
	§	CASE NO. 19-10926-TMD
Debtor.	§	

**DALIA GENDER’S AND D&K GP LLC, RESPONSE/OBJECTION TO DEBTOR’S
MOTION FOR CONTINUANCE, TO CONSOLIDATE HEARINGS AND FOR ENTRY
OF AN ORDER RELATED TO DISCOVERY [DOCKET NO. 106] AND MOTION FOR
EXPEDITED HEARING ON DEBTOR’S MOTION FOR CONTINUANCE AND FOR
ENTRY OF AN ORDER RELATED TO DISCOVERY [DOCKET NO. 107]**

TO THE HONORABLE TONY M. DAVIS, UNITED STATES BANKRUPTCY JUDGE

Dalia Genger and D&K GP LLC (collectively “Dalia”), by and through their counsel, files this Response and Objection (the “Response/Objection”) to the Debtor’s Motion for Continuance, to Consolidate Hearings and for Entry of an Order Related to Discovery [Dkt. No. 106] and Motion for Expedited Hearing on Debtor’s Motion for Continuance and for Entry of an Order Related to Discovery [Dkt. No. 107] (the “Motions”) and in support of this Response/Objection, Dalia respectfully represents:

I. BACKGROUND AND ARGUMENT

1. Debtor’s Motions contain many inaccuracies concerning the nineteen (19) years of litigation, most of it decided, in New York and Delaware courts. The fact is that those nineteen (19) years of litigation cannot and should not be re-litigated in this court.

2. Debtor did not consult with Dalia prior to filing the Motions. The Certificate of Conference on the Motion for Expedited Hearing on Debtor’s Motion for Continuance and for Entry of an Order Related to Discovery (“Motion to Expedite”) appears to state that counsel for Dalia was consulted and opposes the Motion to Expedite, although several emails were circulated

between counsel Michael Bowen and copied to Dalia's counsel, regarding a proposed continuance and the timing.

3. In fact, Sagi approached Debtor, the Trustee, and Dalia regarding a rationalization of the hearing schedule. (See, email between Sabrina Streusand and Michael Bowen dated October 17, 2019, a true and correct copy of which is attached hereto and incorporated herein). Sagi basically proposed, and Dalia agreed:

- That the parties meet in person the morning of October 23 to resolve any remaining discovery issues and to determine a proper discovery schedule.
- That the parties request that the October 23 setting be used as a status conference.
- That the parties agree to ask the Court to hear Judgment Creditor Sagi Genger's Motion to Dismiss Bankruptcy Case or, Alternatively, to Transfer Venue, and Memorandum of Law in Support [Docket No. 32] (the "Motion to Dismiss") before any other motions or discovery takes place. The hearing on the Motion to Dismiss is to take place on special setting that is scheduled for Thursday, October 31, 2019 at 9:00 a.m.
- That the hearing on the Motion to Show Cause regarding Kasowitz's retention and the Trustee's Application for Retention of Kasowitz Benson Torres LLP as Attorneys for a Special Purpose Pursuant to 11 U.S.C. §327(d) would be heard at a later time, if necessary, after the Motion to Dismiss is heard.
- That the pending 9019 would likewise be considered after the Motion to Dismiss.

4. The Chapter 7 Trustee and Dalia indicated agreement with this proposal. Sagi then made the proposal to all remaining parties. Instead of replying and without consultation, Debtor filed its motion to continue everything.

5. It is logical that the Motion to Dismiss should be considered first. It makes sense for the parties to properly consult regarding the discovery issues.¹ It also makes sense for the 9019 motion and the Kasowitz-related motions to be considered after the Motion to Dismiss is decided.

6. However, Dalia believes it does not make sense to consolidate all pending motions. If the case should proceed elsewhere or is dismissed, it does not make sense to conduct discovery and hearings on the other matters.

7. Dalia respectfully requests that the Court convert the pending October 23 hearing to a status conference.

II. PRAYER

WHEREFORE, Dalia Genger and D&K GP LLC respectfully requests that the hearings remain on the Court's docket as currently scheduled, or, alternatively, convert the October 23 hearing to a status conference, and grant such other and further relief as this Court may deem just and proper.

Dated: October 18, 2019.

Respectfully submitted,

/s/ Shelby A. Jordan

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¹ Sagi has already extensively consulted with Arie's counsel and has been able to narrow the scope of document discovery by agreement. Likewise, Sagi has been able to narrow the scope of document discovery with the Debtor.

CERTIFICATE OF SERVICE

The undersigned hereby certified that a true and correct copy of the foregoing instrument has been served on this 18th day of October 2019 upon the parties listed in the attached service list and via ECF notification.

/s/ Shelby A. Jordan

Shelby A. Jordan

Via ECF

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